

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Index No.: 09-CV- 2990 (Seybert)

Plaintiff,

-against-

BARRY COHAN, DENTAL HEALTH  
CARE, P.C., NEW YORK DENTAL  
PAIN, P.C., LONG ISLAND DENTAL  
PAIN, P.C.

Defendants.

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**MOTION TO VACATE DEFAULT JUDGMENT**

Now come the Defendants in the above captioned matter, and respectfully vacate the default judgment entered in this matter and assign a scheduling conference date to the parties.

As grounds therefore, the defendants state that the Defendants were served in July of 2009 in this matter. Counsel for the defendants contacted the Plaintiff's counsel to discuss settlement possibilities in this case. Unbeknownst to the Defendants or Defendants' counsel a default was entered. After numerous attempts to persuade Plaintiff's counsel to voluntarily stipulate to vacating the default Defendants are forced to move the Court for this relief.

The Defendants have viable defenses to this case as the supporting affidavits state. The dentistry performed was both medically necessary and properly billed. There was no misrepresentation of any facts to the Plaintiff. The supporting affidavit of Stanley Frankel is from an individual who

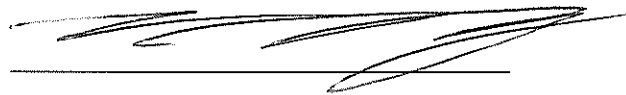
at a minimum has been indicted on insurance fraud charges. And lastly and perhaps most importantly, most if not all of the claims at issue are beyond the applicable statute of limitations.

This Motion is supported by the Declaration of Counsel and the Affidavit of Dr. Barry Cohan.

Respectfully submitted,

The Defendants

By Counsel

A handwritten signature in black ink, appearing to read 'Matthew J. Conroy', is written over a horizontal line.

Matthew J. Conroy, Esq. (MC 9014)

Matthew J. Conroy & Associates, P.C.

350 Old Country Road – Suite 106

Garden City, NY 11530

(516) 248-2425

Dated: Jan. 05, 2009

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**DECLARATION OF COUNSEL**

I, Matthew J. Conroy do hereby declare and state as follows under the pains and penalties of perjury:

1. I am an attorney duly admitted to practice law before the Courts of the State of New York and the United States District Courts for the Eastern and Southern Districts of New York.
2. I am counsel to the Defendants in this action and am fully familiar with the facts and circumstances contained herein.

3. On Friday July 24, 2009 I met with Dr. Cohan in my offices in Garden City, NY.

During this meeting, I placed a phone call to Barry Levy, Esq., counsel for the plaintiff in this matter. During this phone conversation I inquired as to whether Plaintiff would be agreeable to a certain settlement arrangement between the parties. The phone call ended

with Mr. Levy indicating that he would get back to me with his client's response to the proposal.

4. Mr. Levy did not get back to me and instead entered a default in this matter.
5. The Defendants have multiple viable defenses to this case as my client fully believes that every dental treatment he performed with respect to the State farm allegations was medically necessary and in no way fraudulent or misrepresentative in any way of what was actually performed, and the manner in which it was billed.
6. In addition I would note that the vast majority of the claims at issue were services performed as many as ten (10) years ago and the statute of limitations on any such actions have expired by law years ago.
7. I made numerous requests of Mr. Levy to have this default vacated to avoid the expense and delay of having to make this motion.
8. I would also note that the Complaint is supported in large part by the affidavit of Stanley Frankel, DDS. Dr. Frankel was indicted for insurance fraud in 2004 and his credibility is subject to further scrutiny. A copy of the New York Department of Insurance Press Release is attached hereto as Exhibit "A".

Signed this 05<sup>th</sup> day of January 2010 under the pains and penalties or perjury,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form the name Matthew J. Conroy.

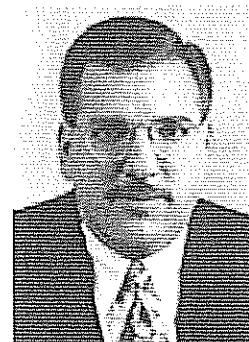
Matthew J. Conroy, Esq.

**CRIME RING IN QUEENS INDICTED FOR NO-FAULT AUTO INSURANCE FRAUD**

by New York State Insurance Department  
8/16/2004 8:55:46 AM

**10 People, 5 Corporations Indicted For Operating Fraud Ring in Hollis, Queens**

Superintendent of Insurance Gregory V. Serio and Attorney General Eliot Spitzer today announced the indictment of 10 individuals and five corporations accused of operating an insurance fraud ring out of SZ Medical, a clinic in Hollis, Queens. The defendants include nine health care providers and are alleged to have fraudulently billed an insurance carrier for months of treatment and extensive testing, including medical evaluations, diagnostics tests, physical therapy, chiropractic treatment and acupuncture.



Gregory V. Serio (NYSID)

Gregory V. Serio, Superintendent of Insurance, said, "It's particularly disturbing that this fraud ring was comprised of doctors and health care providers, professionals who are here to protect us and not betray the public's trust by defrauding our insurance system. Thanks to our strong partnership with Attorney General Spitzer, these people have been exposed and this case will help us build more momentum in the fight against fraud."

"This case demonstrates the sustained and coordinated effort required to combat the pervasive nature of auto insurance fraud," Attorney General Spitzer said. "My office will continue to work with the State Insurance Department, law enforcement, and industry officials to bring these cases. While we are making progress, there is still an extraordinary amount of work yet to do."

Under the State's no-fault auto insurance law, insurance carriers reimburse medical facilities for services provided to persons injured in motor vehicle accidents. It is alleged that the defendants submitted fraudulent claims to a no-fault insurance carrier for services never provided or for services that were not medically necessary. The charges stem from a long-term investigation of SZ Medical which began in Spring, 2003.

According to the indictment, the defendants fraudulently billed an insurance carrier for months of treatment and extensive testing, including medical evaluations, diagnostics tests, physical therapy, chiropractic treatment and acupuncture.

The indictment charges that fraudulent claims were submitted by three medical doctors, Sergey Zavilyansky, 48, of Brooklyn; Gary Friedman, 51, of Manhattan; and Lee Craig Nagourney, 52, of Brooklyn. Zavilyansky is the owner of SZ Medical. All three are charged with fabricating medical diagnoses and submitting claims for services not provided or not medically warranted.

The indictment additionally charges the following defendants with fraudulent claim submissions:

**Stanley Frankel**, 69, of Manhattan, a dentist; Michael Ferrato, 56, of Suffolk County, a psychologist; Juby Uralil, 26, of Queens County, a physical therapist; Joel Santos, 34, of Queens County, a physical therapist; Peter Pramberger, 51, of Suffolk County, a chiropractor; and Ji

Yong Kim, 39, an acupuncturist.

The indictment also charges that defendant Nelson Bloom, 57, of Brooklyn, a paralegal, held himself out as a licensed attorney and directed a no-fault patient to undergo medical tests and attend the clinic for several months, without regard to medical need, in an effort to increase the potential settlement of a bodily injury claim.

Five corporations are also charged in the indictment: SZ Medical, P.C.; Almaz Medical Services, P.C., owned by physician-defendant Lee Craig Nagourney; Ferrato Psychological Services, P.C., owned by psychologist-defendant Michael Ferrato; Life Chiropractic P.C., owned by defendant Peter Pramberger; and Somun Acupuncture, P.C., owned by acupuncturist-defendant Ji Yong Kim.

The defendants are facing charges of Insurance Fraud in the Third Degree, a D felony; Insurance Fraud in the Fourth Degree, an E felony; Falsifying Business Records in the First Degree, an E felony; Insurance Fraud in the Fifth Degree, an A misdemeanor, Attempted Grand Larceny in the Fourth Degree, an A misdemeanor; Practicing or Appearing as an Attorney-At-Law Without Being Admitted and Registered, an A misdemeanor; Conspiracy to Commit Grand Larceny in the Fourth Degree, an A misdemeanor; and Attempted Petit Larceny, a B misdemeanor.

New York is aggressive in its fight against insurance fraud. To report suspected incidents of insurance fraud call 1-888-FRAUD-NY (1-888-372-8369). It should be noted that an arrest is merely an accusation and that a defendant is presumed innocent until proven guilty.

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PAIN, P.C.

Defendants.

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**AFFIDAVIT**

I, Barry Cohan do hereby depose and state as follows under the pains and penalties of perjury:

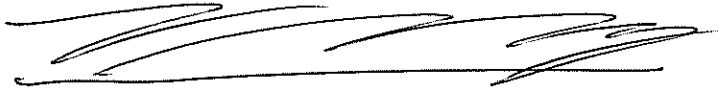
1. I am a resident of Syosset, Nassau County, New York, a dentist duly licensed by the State of New York, and a defendant in the above captioned matter.
2. On or about July 20, 2009 I received a copy of a Summons and Complaint in this matter.
3. Upon receipt of these papers, I delivered a copy to my collection attorney who had been handling State Farm collections, Hillary Blumenthal, as well as my attorney in this matter, Matthew J. Conroy.
4. On Friday July 24, 2009 I met with Mr. Conroy in his offices in Garden City, NY. During this meeting, Mr. Conroy placed a phone call to Barry Levy, Esq., counsel for the plaintiff in this matter. During this phone conversation Mr. Conroy inquired as to whether Plaintiff would be agreeable to a certain settlement arrangement between the parties. The phone call ended with Mr. Levy indicating that he would get back to Mr. Conroy with his client's response to the proposal.
5. It is my understanding that Mr. Levy did not get back to Mr. Conroy and instead entered a default in this matter.
6. I have ample defenses to this case as I fully believe that every dental treatment I have performed with respect to the State farm allegations was medically necessary and in no way fraudulent or misrepresentative in any way of what I actually performed, what I billed for it or whether it was necessary.

7. In addition I would note that the vast majority of the claims at issue were services performed as many as ten (10) years ago and the statute of limitations on any such actions must have expired by law years ago.
8. It is my further understanding that Mr. Conroy has requested numerous times of Mr. Levy to have this default vacated to avoid the expense and delay of having to make this motion.

Signed this 06<sup>th</sup> day of November 2009 under the pains and penalties or perjury,

  
\_\_\_\_\_  
Barry Cohan, DDS

Sworn to before me  
this 6<sup>th</sup> day of November 2009.

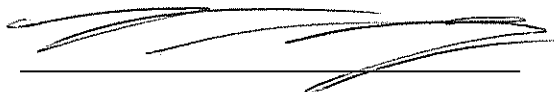


MATTHEW J. CONROY  
Notary Public, State Of New York  
No. 02CD6184385  
Qualified in Nassau County  
Commission Expires 4/1/12



**CERTIFICATE OF SERVICE**

I, Matthew J. Conroy do hereby certify that a true and accurate copy of the foregoing was served upon counsel of record by ECF and by United States Mail 1<sup>st</sup> Class postage prepaid this 5<sup>th</sup> day of January 2010.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes, positioned above a horizontal line.

Matthew J. Conroy